

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 6362

BILL NUMBER: HB 1049

NOTE PREPARED: Mar 12, 2012

BILL AMENDED: Mar 9, 2012

SUBJECT: Courts, Inspector General, Pro Bono Legal Services Fees.

FIRST AUTHOR: Rep. Koch

FIRST SPONSOR: Sen. Bray

BILL STATUS: Enrolled

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Cap on Fees* – It provides that the cap on the fees for program services provided to a person participating in a court-established alcohol and drug services program does not apply to fees for education or treatment and rehabilitation services. The bill allows a problem-solving court to collect program fees.
- B. *Informal Adjustment Program* – It provides that a person may participate in a problem-solving court program as a condition of an informal adjustment program in a child in need of services proceeding.
- C. *Nonsuspendible Sentences* – It eliminates an individual's agreement to the conditions of participation in the program if the case for which the individual is referred to the problem solving court involves a nonsuspendible sentence as a precondition to the placement of the individual in a problem-solving court program.
- D. *Civil Proceedings* – It authorizes the Inspector General to directly institute civil proceedings against persons who have failed to pay civil penalties imposed by the State Ethics Commission.
- E. *Copies of Certain Reports* – It requires the State Board of Accounts to provide to the Inspector General (in addition to the Attorney General) copies of certain reports concerning: (1) malfeasance, misfeasance, or nonfeasance in office by public officials or employees; (2) fraud or misconduct with respect to public contracts; or (3) unlawful expenditure or diversion of public money.
- F. *Pro Bono Legal Services Fee of \$1* – It imposes until July 1, 2017, a pro bono legal services fee of \$1 on parties who file certain civil actions, small claims actions, and probate actions. It requires the pro bono legal services fees to be transferred to the Indiana Bar Foundation as the entity designated

by the Indiana Supreme Court to organize and administer the interest on lawyers trust accounts (IOLTA) program. It requires the Indiana Bar Foundation to: (1) deposit in an appropriate account and otherwise manage the fees the foundation receives in the same manner it deposits and manages the net earnings the foundation receives from IOLTA accounts; and (2) use the fees the foundation receives to assist or establish approved pro bono legal services programs. It specifies that the handling and expenditure of the pro bono legal services fees received by the Indiana Bar Foundation are subject to audit by the State Board of Accounts.

- G. *Protection Order Expansion* – It changes the definition of "family or house hold member" to include a person who adopts a child of the other person.

Effective Date: July 1, 2012.

Explanation of State Expenditures: *Civil Proceedings* - Under current law, the Office of the Attorney General is the only state agency that is authorized to file proceedings to collect civil penalties in courts with small claims jurisdictions without paying a court fee. Presumably, the Office of the Inspector General would be required to pay a series of fees totaling \$76 for each case filed.

Explanation of State Revenues: *Pro Bono Legal Services Fee of \$1* – LSA estimates that this new fee will generate \$450,000 annually. All plaintiffs in civil, small claims, and probate cases that are filed in trial courts, city and town courts, and Marion County Township Small Claims Courts would pay this fee.

Authorization to impose this fee would expire on July 1, 2017.

Background Information- Because no fees are imposed on exclusively civil, small claims, and probate cases, LSA used the difference between the Court Administration Fee, which is imposed on all cases, and the DNA Sample Processing Fee, that is imposed on criminal, infractions, and ordinance violations, to estimate the new revenue that this fee could generate.

Since the Marion County Township Small Claims Courts only hear small claims cases, LSA used the revenue generated for these same fees to make this estimate.

The average revenues collected between 2008 and 2010 were used in these estimates.

Pro Bono Legal Services Fee						
Court	Fee	Imposed On:	Fee	3-Year Average Revenue*	Based on \$1	
Trial Courts, City and Town Courts	Court Administration Fee	All Cases	\$3 - before July 1, 2008 \$5 - after July 1, 2008	\$4,741,806	\$1,023,319	
	DNA Sample Processing Fee	Criminal, Infractions Ordinance Violations	\$2	\$1,282,842	\$641,421	
	<u>Difference Between Court Administration Fee and DNA Sample Processing Fee</u>					\$381,898
Marion County Township Small Claims Courts	Court Administration Fee	Small Claims Cases	\$3 - before July 1, 2008 \$5 - after July 1, 2008	\$315,699	\$67,900	
	Judicial Insurance Adjustment	Small Claims Cases	\$1	\$68,859	\$68,859	
	<u>Average Revenue Generated from \$1</u>					\$68,380
Total Revenue Generated from \$1						\$450,278
* Based on revenues reported in 2008, 2009, and 2010 <i>Indiana Judicial Report</i>						

Explanation of Local Expenditures: *Informal Adjustment Program* – This provision applies to parents, guardians, or other household members of children in need of services (CHINS) when the adults are dealing with substance abuse issues. Under current law, courts with juvenile jurisdiction can only order these adults to participate in a drug treatment program after a finding is made (post disposition orders). This bill would allow courts to make these orders prior to making a finding, and get the individual into treatment more quickly. Courts with this type of jurisdiction are called Family Dependency Treatment Courts. Currently, Clark, Marion, and Noble Counties are developing certified family dependency courts.

Nonsuspendible Sentences – This provision gives courts additional flexibility to order certain offenders to participate in programs that problem-solving courts provide. Staff at the Indiana Judicial Center report that published research indicates that an individual's initial lack of motivation or desire to participate in treatment does not necessarily indicate that an individual will fail in treatment.

Disposing of a Case – Staff at the Indiana Judicial Center note that while the vast majority of problem-solving courts accept the transfer of cases from other courts, some courts prefer to retain jurisdiction of their own cases. These courts may refer individuals to a problem-solving court and defer to the problem-solving court judge while that individual participates in the problem-solving court. When the individual either successfully completes the program or is terminated, the court will take the cases back for final disposition. Consequently, this statute allows flexibility in court operations to meet the needs of both the sentencing court and the problem-solving court.

Explanation of Local Revenues: *Cap on Fees* – Staff with the Indiana Judicial Center report that lifting the limit on program fees for education services would permit courts to provide more services in-house rather than refer defendants to outside providers. Under current law, if treatment is in-house, then all services must be under the \$400 cap. If the services are provided by community mental health centers, then the centers can charge outside the cap.

The costs of providing the education component of the drug treatment programs vary by program depending on how long the program lasts (8 to 20 hours) and whether the education is provided in-house or by contract.

[The current cap in statute is \$400. This fee was last increased in 2001, when SEA 506 – 2001 increased the fee from \$300 to \$400.]

State Agencies Affected: Office of the Inspector General; Indiana Supreme Court Division of State Court Administration; State Board of Accounts.

Local Agencies Affected: 54 court alcohol and drug programs in Indiana; Courts.

Information Sources: 2008, 2009, 2010 *Indiana Judicial Reports*; Diane Mains, Indiana Judicial Center; Conner, Bradley T. Douglas Longshore and M. Douglas Anglim, 2009, *Modeling Attitude Toward Drug Treatment: the Role of Internal Motivation, External Pressure, and Dramatic Relief*. Journal of Behavioral Health Services and Research 36: 150 - 158;

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